THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 21st day of August,2007

W.P.Nos.8512 to 8523 of 2007

W.P.No.8512/07

Between:-

VST Industries Limited, an existing
Company with the meaning of
Companies Act,1956, having its
Registered Office at Azamabad,
Hyderabad-500 020, represented by
Its Corporate General Counsel
Mr.Sanjay Khanna … Petitioner

and

The Presiding Officer,
Labour Court I, 2nd floor,
Chandravihar Building,
M.J.Road, Nampally,
Hyderabad-500 001
and another … Respondents

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W.P.Nos.8512 to 8523 of 2007

COMMON ORDER:

In this batch of Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Petitioner is the Management of V.S.T. Industries Limited, Hyderabad. Respondent No.2 in all these Writ Petitions is the workman.

Respondent No.2-workmen have filed claim petitions under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') before Labour Court-I, Hyderabad. It is their claim that they are working since long time with the petitioner-Management. The workmen – 14 in number – were shown as contract workers working in the Shipping Department of the company. According to them, their names are shown in the attendance register and their attendance was being marked by Sergeant of the Security Department of the Company. Respondent No.2 were not allowed to sign in the attendance register. Respondent No.2 and others used to load cigarettes manufactured by the company in various modes of transport. They were paid Employees State Insurance from 1987 and Provident Fund contributions were made from the year 1995 onwards. They were continuously discharging their duties from the initial date of appointment till the date of filing claim petitions, without any interruption or break in service as regular employees of the petitioner-

company. Further, the A.P. State Contract Labour Advisory Board in its meeting held on 6-7-1993 in the chambers of the Chairman, having visited various industries including the petitioner-company and after observing the work of loading and unloading and also after finding that it is perennial in nature, have concluded that the system of contract labour in loading and unloading operations be abolished. The said resolution passed by the Board on 6-7-1993 was communicated through letter No.O2/38002/93, dated 12-7-1993, but no action, as yet, has been taken by the Government. Under such circumstances, the contract labour were constrained to file a Writ Petition in W.P.No.6096 of 2001 before this Court seeking a direction to the Government to take decision on the recommendations made by the A.P. State Contract Labour Advisory Board on 6-7-1993 in respect of abolition of contract labour in loading and unloading operations in the company. The said Writ Petition was admitted on 4-4-2001 and is pending. While the matter stood thus, from 14-2-2002, the Management started showing its true colours by trying to stop 7 workmen. It was trying to minimize the number of working days of all workmen, by stopping 50% of the workmen and asking other 50% of the workmen to discharge the work, which was originally done by 14 workmen including the 2nd respondent. Due to this practice, the workmen lost the requisite number of working days. This unfair labour practice is also to deprive the benefits of ESI etc. However, both the employer's and employees' contribution of ESI and PF are being deducted from the amounts due to the 2nd respondent and shown as if the petitioner-management pays the employees' contribution.

The entire so called projection of their co-workers as a contractor is nothing but a smoke-screen created by the Management. Every two years, one of the 14 workers was shown as a contractor and the

contract was shown to be awarded in his name without actually doing it. A co-worker has been projected as a contractor and he is none other than the workman of the company. The said contract system is a sham, nominal and corporate veil to deprive the benefit of the labour welfare legislations to them. The said contract system is not genuine and is only a corporate veil to deny the regular benefits to the workmen. The transporters, transporting cigarette cartoons changed from time to time, in these 30 years, but the respondent-workmen continued the loading and unloading operations in the Shipping Department. There was no interruption or break in service, despite change of transport. The transporters never controlled or exercised supervision over the work performed by the workers. The respondent-workmen were paid on piece rate basis through the transporters. They were given identity cards also. The entire device is a cooked up corporate veil to deprive the workers of the benefit of regularization. In fact, the Management had regularized the services of 7 workers, who are juniors to the 2nd respondent. This itself would indicate the complete control and supervision of the Shipping Department by the Company. The Shipping Department is a regular Department of the petitioner-company containing several workmen regularly employed. Respondent No.2 have been requesting to regularize their services and pay the remuneration on par with regular workmen together with all rights, benefits given under the Standing Orders, the instructions and agreements arrived at from time to time with the Management. The same is evaded on one pretext or the other. In the joint meeting held on 2-9-2002, the Management agreed to allow all the 14 workers in service with whatever wages that were paid to them and they will share the contributions for PF and ESI as per law. Further, the Management was requested to implement the same as agreed in

the joint meeting and the same was communicated through the letter dated 29-5-2002 by the Assistant Commissioner of Labour-III, Hyderabad to the Management. In spite of that, the management did not take any steps in the matter. On the other hand, the Assistant Commissioner of Labour-III, Hyderabad issued Proceedings No.A/127/2002, dated 16-12-2002 on the pretext that the workmen are working with a contractor Sri Bala Narasimha for loading and unloading operations and the issue of regularization of the services of the workmen pending subjudice in Writ Petition No.6096 of 2001 does not arise. It is their case that they are being stopped from working in the Shipping Department in loading and unloading operations without any valid reason or cause. The workmen were not given any notice or paid notice pay or retrenchment compensation as prescribed under Section 25-F of the Act and, therefore, stopping workmen to attend from duties is arbitrary, illegal and liable to be set aside. Aggrieved by the same, respondent No.2, as stated above, filed claim petitions under Section 2-A(2) of the Act, which were numbered as I.D.Nos.178 to 189 of 2006 and batch by Labour Court-I, Hyderabad. Challenging the same, the Management filed the present Writ Petitions seeking a Prohibition restraining the 1st respondent-Labour Court-I, Hyderabad from proceeding further with the said I.Ds.

The Management has not filed any counter to the claim petitions and straightaway filed these Writ Petitions stating that the Labour Court is totally lacking jurisdiction to entertain petitions under Section 2-A(2) of the Act. The very averments made in the claim petitions would indicate that the petitioners therein are all contract labour working for the last so many years. Further, it is their case that the Advisory Board under Contract Labour (Regulation & Abolition) Act,1970 (for short 'CLRA Act') had recommended for abolition of such

nature of job being entrusted to a contractor and the recommendation is pending with the Government. This all would show that the 2nd respondent are merely contract labour, who entered into a contract with the management. Further, their prayer is to declare that stopping them from attending to duties by the management is arbitrary and illegal. In fact, the 2nd respondent were paid by the transporters and they were all working under one contractor. Therefore, there is no relationship of master and servant and they are not workmen within the meaning of Section 2(s) of the Act. Further, the Labour Court cannot go into the aspect as to camouflage and corporate veil in a petition filed under section 2-A(2) of the Act. May be, it is permissible if a reference is made by the appropriate Government in this regard. As such, the 2nd respondent cannot maintain a claim petition under Section 2-A(2) of the Act. Therefore, these writ petitions are filed seeking to prohibit the Labour Court to proceed with the matters in I.D.Nos.178 to 189 of 2006.

Learned counsel for the 2nd respondent strenuously contended that it is the case of the 2nd respondent all through that one of them is being named as a contractor and this is only a camouflage and a corporate veil to deprive the legitimate right of the 2nd respondent under various labour laws. Further, they have been stopped from working since 14-2-2002 without following the mandatory provisions of Section 25-F of the Act, which amounts to illegal termination of the services of the 2nd respondent. As such, the claim petitions under Section 2-A(2) are maintainable.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the claim statements and other material made available on record.

From the above pleadings and arguments, the following questions arise for consideration:

1. Whether there was an employer and employee relationship between the petitioner and the 2nd respondent ?
2. Whether the 2nd respondent are contract labour or there is any camouflage or corporate veil, which can be considered and decided by the Labour Court ? and
3. Whether the Labour Court has jurisdiction to entertain a petition under Section 2-A(2) of the Act, in the facts and circumstances of the case ?

Learned counsel for the petitioner relied upon a Judgment reported in **WORKMEN OF F.C.I. v. F.C.I.OF INDIA**[1] and drawn attention of the Court to paragraph-12, which reads as under:

> "12. Briefly stated, when Corporation engaged a contractor for handling foodgrains at Siliguri Depot, the Corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen. between the Corporation and the workmen. 'Workmen' has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean 'any person (including an apprentice) employed in any industry to do .....'.The expression 'employed' has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the Act. (Dharangadhara Chemical Works Ltd. v. State of Saurashtra 1957 SCR 152 (AIR 1957 SC 264). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something

> more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union."

and stated that the 2nd respondent are not the workmen and there was no industrial dispute. The scope of Section 2-A(2) of the Act lies in a very narrow compass and only in case of discharge, dismissal, retrenchment or termination, one can maintain a petition under Section 2-A(2) of the Act, provided that there is a relationship of employer and employee. In this case, absolutely, there is no relationship of master and servant, even from the averments made in the claim petitions. It is clear that the 2nd respondent are contract labour working under a contractor. They were never employees of VST Industries Limited. Mere deduction of PF and ESI would not mean, they are the workmen of VST Industries Ltd. The deduction of PF and ESI are obligatory under the respective Acts. Further, it is an admitted fact that the Advisory Board under the CLRA Act had passed a resolution recommending abolition of the contract labour system in respect of loading and unloading operations in the Shipping Department of the Company on 6-7-1993 and the matter is pending with the Government, which is the subject of another Writ Petition in W.P.No.6096 of 2001. This all would show that the 2nd respondent cannot be called the employees of the petitioner-company and once they are contract labour, there is no relationship of master and servant. Therefore, a petition under Section 2-A(2) of the Act is not maintainable.

Learned counsel for the petitioner also relied upon a Judgment reported in **STEEL AUTHORITY OF INDIA LTD. V. NATIONAL UNION WATERFRONT WORKERS**[2] and drawn attention of the Court to various paragraphs thereof and submitted that a contract

labourer cannot be called to be a 'workman' and there is any relationship of master and servant and if they are stopped from attending the work, it cannot be called termination, retrenchment, dismissal or discharge from service of the company. Learned counsel further relied upon a Judgment in **OIL AND NATURAL GAS CORPORATION LIMITED v. N.SATYANARAYANA**[3] wherein the dispute is raised by the individual contract labourer with regard to his absorption when he stood discharged, and till then there was no relationship of master and servant between the contract labour and the Corporation, which was only a principal employer. Under those circumstances, it was held that the question, whether the contract labour was a ruse or camouflage cannot be raised under Section 2-A(2) of the Act by an individual contract labourer and he can only approach the Labour Court under Section 2(k) of the Act seeking a reference under Section 10(1) of the Act. The learned counsel has also relied upon a Judgment reported in **BHARAT HEAVY ELECTRICALS LTD. V. ANIL AND OTHERS**[4] and drawn attention of the Court to paragraph-18, which reads as under:

> "18…….There is a difference between an individual dispute, which is deemed to be an industrial dispute under Section 2-A of the said 1947 Act on the one hand and an industrial dispute espoused by the union in terms of Section 2(l) of the said 1947 Act. An individual dispute, which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination, whereas an industrial dispute under Section 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purpose of deciding this case. In *Radhey Shyam v. State of Haryana* (1998(2) LLJ 1217 P&H) it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act,1947 (which is similar to Section 2(l) of the said 1947 Act). Section 2-A does not cover every type of dispute between an individual workman

> and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes, such as, bonus, wages, leave facilities, etc."

_and submitted that Section 2-A does not amend the definition of 'industrial dispute' set out in Section 2(k) of the Act. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A(2) merely enables the individual worker to raise an industrial dispute notwithstanding that no other workman or union is a party to the dispute. Section 2-A(2) applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes, like, bonus, wages, leave facilities etc. According to the learned counsel for the petitioner, it is only a dispute seeking regularization of their service and such questions cannot be decided by the Labour Court.

Whereas, according to the learned counsel for the 2nd respondent, there is a relationship of master and servant and unless and until the corporate veil is lifted, the true intention of the management may not come out. The questions whether there is a relationship of master and servant or not and whether there is any camouflage or corporate veil, can be examined only after evidence is let in before the Labour Court and not otherwise. The burden to prove same is on the petitioner. Petitioner-VST Industries Limited has not revealed its defence before the Labour Court to come up its true colours. Further, whether there was control and supervision exercised by the Management directly and whether ESI and PF was paid, needs evidence to be let in by both the parties. In this regard, learned

counsel for the respondent No.2 relied upon judgments reported in **MANAGEMENT OF BADJAMPURA SALT FACTORY v. ITS WORKMEN**[5], **WORKMEN OF NILGIRI COOP.MKT.SOCIETY LTD. V. STATE OF TAMILNADU AND OTHERS**[6] and **APSRTC v. G. SRINIVAS REDDY**[7].

In **MANAGEMENT OF BADJAMPURA SALT FACTORY** case (5 supra), this Court held as under:

> "4. Learned counsel for the petitioner urged that the tribunal had no jurisdiction to entertain this reference for the reason that it was not an industrial dispute within the meaning of the Act. He contended that the position of the respondents, in this case, is not that of workmen as defined in Section 2(a) of the Act. The argument was that the management got all its labour through the mediation of a person called the Maistry, whose duty it was to arrange for the requisite labour having regard to the quantity of work, time available, etc. It was contended that the course of dealings had all along been that payments used to be made to the Maistry on the basis of the bags transported and the workmen were not paid individually for their labour. It was stated that no muster roll was maintained of these workmen and no account of these payments made individually to the workmen was found in the accounts of the concern. On the basis of these contentions, it was argued that the respondents not being workmen and inasmuch as the Act envisaged a dispute between an employer and employee any dispute between the management and the respondents, who were third parties and not workmen could not come within the cognizance of the Industrial Tribunal.
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> 5. It was urged by the learned counsel for the respondents that where a reference had been made under Section 10(2) of the Act, it was not open to the petitioners to question the jurisdiction of the tribunal. So, the first question that has to be decided is as to whether there having been a reference by the Government under Section 10(2) of the Act, it was open to the petitioner to question the jurisdiction of the Tribunal. What is an industrial dispute is an objective fact. The fact that the Government made a reference regarding it as an industrial dispute is not conclusive of the matter. Where, therefore, the dispute does not partake of the nature of an industrial dispute, it cannot be converted into an industrial dispute……..These observations of the Supreme Court would amply indicate that the fact of a reference having been made by the

Government as an industrial dispute to the Industrial Tribunal is not conclusive of the question that it is an industrial dispute. Where, therefore, a reference is made by the Government, the Tribunal has the power to examine as to whether it has jurisdiction. Therefore, the objection of the respondents to say that the question of jurisdiction cannot be canvassed cannot be sustained."

In **WORKMEN OF NILGIRI COOP.MKT.SOCIETY LTD.** (6 supra) the Supreme Court held as under:

"32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the concerned employees are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard and fast rule nor it is possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it organisation or any other test - has been held to be the determinative factor for determining the jural relationship of employer and employee.

37. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the Court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him."

In **G. SRINIVAS REDDY**'s case (8 supra), the Apex Court observed as under:

"9. In Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. [2001 (7) SCC 1], a Constitution Bench of this Court overruled the decision in Air India (supra) and held that where contract labour are engaged in connection with the work in an establishment and employment of such contract labour is prohibited by issue of a notification under Section 10(1) of the CLRA Act, there was no question of automatic absorption of the contract labour working in the establishment and the principal employer cannot be required to absorb the contract labour. This Court also held that on a

contractor engaging contract labour in connection with the work entrusted to him by the principal employer, it does not culminate into a relationship of 'master and servant' between the principal employer and the contract labour. This Court held that whether the contract labour system was genuine or a mere camouflage has to be adjudicated only by the Industrial Tribunal/court and not by the High Court in its writ jurisdiction. We extract below the relevant portions of the principles summed up by this Court :

> "(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

May be, the discreet camouflage or corporate veil needs to be lifted and find out as to whether the 2nd respondent are the employees of the principal employer. But, this aspect can be gone into only in an appropriate reference made to the Labour Court by the appropriate Government and not in a case of this nature. In this regard, the law is well settled. Further, it is a fact that earlier, the Board under the CLRA Act had already recommended for abolition of contract system in the loading and unloading operations of Shipping Department of the petitioner-company, which, of course, has not fructified since the Government has not issued any notification as required under the law, which is the subject of another Writ Petition in W.P.No.6096 of 2001.

This all would indicate that *prima facie,* the 2nd respondent are contract labour, may be one of them is named as a contractor, but still this cannot be gone into in a petition filed under Section 2-A(2) of the Act.

Further, there is no categorical assertion that the services of the 2nd respondent were terminated, which is contrary to the provisions of Section 25-F of the Act. Even this aspect also cannot be gone into in view of the fact that *prima facie* it appears, the 2nd respondent are only contract labour. Therefore, I am of the opinion that the 2nd respondent cannot maintain a claim petition under Section 2-A(2) of the Act before the Labour Court.

But, as noticed above, the 2nd respondent have been toiling around the authorities, firstly, seeking to abolish the contract labour system in the V.S.T. Industries, particularly, loading and unloading operations in the Shipping Department. Secondly, though the State Contract Labour Advisory Board had recommended for abolition of loading and unloading operations in the Shipping Department of the company, the Government has not taken any decision and the writ petition filed, in this regard, is pending before this Court. Further, the petitions under Section 2-A(2) are filed stating that the services of the 2nd respondent are terminated. In fact, the practice of the employers to stifle the efforts of the workmen in their legitimate claim seeking benefit under the industrial law by tiring them out in adjudication proceedings raising technical and hyper-technical pleas and thus dragging on litigation for years on such pleas requires to be depreciated. The primary duty of the Industrial Tribunal is to establish peace in the industry between the employer and the workmen. The plea of the petitioner-employer is that a petition, in the present shape, i.e. under Section 2-A(2) of the Act is not maintainable. Thus, it is clear that a petition under a different form, when a reference is made under Section 10 of the Act, is maintainable. In these cases, as many as 14 workmen are involved. Their nature of plea and relief

sought is one and the same. If the 2nd respondent are directed to seek reference under Section 10 of the Act, it may further delay the cause. In view of this prolonged litigation and the 2nd respondent were not successful all these years in getting their cause adjudicated, to avoid any further delay and to meet the ends of justice, I deem it appropriate to direct the Labour Court to consider the petitions filed under Section 2-A(2) of the Act as a reference under Section 10(1) of the Act and proceed with the matter and decide the same, on merits, within a period of six (6) months from the date of receipt of a copy of this Order.

Accordingly, these Writ Petitions are disposed of. No order as to costs.

21-8-2007

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[1] 1985(2) LLJ 4

[2] 2001(7) SCC 1

[3] 2003(3) ALD 711

[4] 2007(1) SCC 610

[5] AIR 1960 A.P. 378

[6] 2004(3) SCC 514

[7] 2006(3) SCJ 132